

3rd
EDITION

Blackstone's

Statutes on CRIMINAL LAW

P. R. GLAZEBROOK

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CRIMINAL LAW

Third Edition

P. R. Glazebrook

Fellow of Jesus College
Cambridge



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PREFACE

England is one of only a handful of jurisdictions among the developed countries of the world which is still without a Criminal Code: most of the under-developed countries are, in this respect at least, better provided for. The Law Commission's declared aim is to make good this lack of a single, comprehensive enactment specifying both the conduct which is prohibited under threat of imprisonment and other severe penalties, and the conditions which must be satisfied before a person who has engaged in such conduct may be convicted and punished. In April 1989, after many years' work, the Commission published a Report (Law Com. No. 177; HC Paper (1988-89) 299) which included a Draft Criminal Code Bill. The Draft Code, though very much better than nothing, was in many respects a disappointing document. It was not based on any clearly identified or consistent principles, and suffered from many of the defects proverbially attributed to buildings designed by a committee (in this case several committees) rather than an architect. It combined an eclectic choice of reforms with the all-too-faithful reproduction of many of the unprincipled quirks and anomalies of the present law. Enshrined in two centuries of statutory draftsmanship of very uneven quality and in judicial pronouncements often hastily rendered or poorly considered (or both), this law is itself the product of changing views of morality and of when and how penal measures should be used in the hope of protecting the community against the violent, the avaricious, the selfish and the careless. So a good deal more work is needed before the Draft Code will be worthy of Parliament's attention. The Commission has since published (in Consultation Paper No. 122 (March 1992)) a draft Criminal Law Bill (reprinted at the end of this book), which is modelled on the draft Code, and which would 'revise the law . . . with respect to the main non-fatal offences against the person' and 'enact with amendments certain defences and other rules of law generally applicable to offences.' Only time will tell whether so very limited a Bill represents, as the Commission hopes, the first stage in implementing the Code project, or the fatal first step towards its abandonment, and a return to merely piecemeal reform of the criminal law. Meanwhile students and teachers of criminal law (not to mention policemen, magistrates, jurors, lawyers and judges) must continue to confront a great jumble of statutory provisions, exhibiting many different drafting styles, which are replete with detail, but short on principle.

There are believed to be close on 8,000 different criminal offences on the statute-book. This present selection, which is intended to be no more than a convenient means of reference to the main statutory framework of the substantive criminal law, is, therefore, inevitably a personal and, to a degree, an arbitrary one. But it is hoped that it is extensive and varied enough to meet the needs both of those students following criminal law courses of a traditional sort, which involve a detailed study of the principal offences of personal violence and fraud (who will learn much about their inadequacies

by studying the less familiar legislation designed to supplement them) and of those whose courses place more emphasis on the use of the criminal law to regulate less obvious, yet often equally harmful, forms of antisocial behaviour. Considerations of space and cost have, however, demanded the excision of most of the procedural, evidentiary, and administrative provisions of these statutes, as also of almost all penalty provisions where these are separate from the offence-creating ones.

In general the statutory provisions selected are printed in the form in which they were law on 1 June 1993. It has, however, been possible to incorporate the relevant provisions of the Criminal Justice Act 1993 which received the Royal Assent on 27 July.

P R Glazebrook

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1 GENERAL RULES

(a) LIABILITY

INTERPRETATION ACT 1978

5. Definitions

In any Act, unless the contrary intention appears, words and expressions listed in Schedule 1 to this Act are to be construed according to that Schedule.

SCHEDULE 1

‘Person’ includes a body of persons corporate or unincorporate.

In relation to England and Wales —

(a) ‘indictable offence’ means an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable or triable either way;

(b) ‘summary offence’ means an offence which, if committed by an adult, is triable only summarily;

(c) ‘offence triable either way’ means an offence which, if committed by an adult, is triable either on indictment or summarily;

and the terms ‘indictable’, ‘summary’ and ‘triable either way’, in their application to offences, are to be construed accordingly.

In the above definitions references to the way or ways in which an offence is triable are to be construed without regard to the effect, if any, of section 22 of the Magistrates’ Courts Act 1980 on the mode of trial in a particular case.

6. Gender and number

In any Act, unless the contrary intention appears, —

(a) words importing the masculine gender include the feminine;

(b) words importing the feminine gender include the masculine;

(c) words in the singular include the plural and words in the plural include the singular.

15. Repeal of repeal

Where an Act repeals a repealing enactment, the repeal does not revive any enactment previously repealed unless words are added reviving it.

16. General savings

(1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears, —

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;

(c) affect any right, privilege, obligation or liability acquired, accrued, or incurred under that enactment;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

(2) This section applies to the expiry of a temporary enactment as if it were repealed by an Act.

18. Duplicated offences

Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished more than once for the same offence.

CRIMINAL LAW ACT 1967

1. Abolition of distinction between felony and misdemeanour

(1) All distinctions between felony and misdemeanour are hereby abolished.

(2) Subject to the provisions of this Act, on all matters on which a distinction has previously been made between felony and misdemeanour, including mode of trial, the law and practice in relation to all offences cognisable under the law of England and Wales (including piracy) shall be the law and practice applicable at the commencement of this Act in relation to misdemeanour.

6. Trial of offences

(1) Where a person is arraigned on an indictment —

(a) he shall in all cases be entitled to make a plea of not guilty in addition to any demurrer or special plea;

(b) he may plead not guilty of the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment;

(c) if he stands mute of malice or will not answer directly to the indictment, the court may order a plea of not guilty to be entered on his behalf, and he shall then be treated as having pleaded not guilty.

(2) On an indictment for murder a person found not guilty of murder may be found guilty —

(a) of manslaughter, or of causing grievous bodily harm with intent to do so; or

(b) of any offence of which he may be found guilty under an enactment specifically so providing, or under section 4(2) of this Act; or

(c) of any attempt to commit murder, or an attempt to commit any other offence of which he might be found guilty;

but may not be found guilty of any offence not included above.

(3) Where, on a person's trial on indictment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged in the indictment, but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court of trial, the jury may find him guilty of that other offence or of an offence of which he could be found guilty on an indictment specifically charging that other offence.

(4) For purposes of subsection (3) above any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged on an indictment with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the completed offence, then (subject to the discretion of the court to discharge the jury with a view to the preferment of an

indictment for the completed offence) he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

(5) Where a person arraigned on an indictment pleads not guilty of an offence charged in the indictment but guilty of some other offence of which he might be found guilty on that charge, and he is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty, then (whether or not the two offences are separately charged in distinct counts) his conviction of the one offence shall be an acquittal of the other.

CHILDREN AND YOUNG PERSONS ACT 1933

50. Age of criminal responsibility

It shall be conclusively presumed that no child under the age of ten years can be guilty of any offence.

THEFT ACT 1968

30. Husband and wife

(2) Subject to subsection (4) below, a person shall have the same right to bring proceedings against that person's wife or husband for any offence (whether under this Act or otherwise) as if they were not married, and a person bringing any such proceedings shall be competent to give evidence for the prosecution at every stage of the proceedings.

(4) Proceedings shall not be instituted against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's wife or husband, or for any attempt, incitement or conspiracy to commit such an offence, unless the proceedings are instituted by or with the consent of the Director of Public Prosecutions:

Provided that —

(a) this subsection shall not apply to proceedings against a person for an offence —

(i) if that person is charged with committing the offence jointly with the wife or husband; or

(ii) if by virtue of any judicial decree or order (wherever made) that person and the wife or husband are at the time of the offence under no obligation to cohabit.

CRIMINAL JUSTICE ACT 1967

8. Proof of criminal intent

A court or jury, in determining whether a person has committed an offence, —

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

ACCESSORIES AND ABETTORS ACT 1861

8. Abettors in misdemeanours

Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.

MAGISTRATES' COURTS ACT 1980

44. Aiders and abettors

(1) A person who aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence and may be tried (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having by virtue of his own offence jurisdiction to try him.

(2) Any offence consisting in aiding, abetting, counselling or procuring the commission of an offence triable either way (other than an offence listed in Schedule 1 to this Act) shall by virtue of this subsection be triable either way.

CRIMINAL JUSTICE ACT 1948

31. Jurisdiction and procedure in respect of certain indictable offences committed in foreign countries

(1) Any British subject employed under His Majesty's Government in the United Kingdom in the service of the Crown who commits in a foreign country, when acting or purporting to act in the course of his employment, any offence which, if committed in England, would be punishable on indictment, shall be guilty of an offence . . . and subject to the same punishment, as if the offence had been committed in England.

(b) DEFENCES

CRIMINAL LAW ACT 1967

3. Use of force in making arrest, etc.

(1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(2) Subsection (1) above shall replace the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose.

POLICE AND CRIMINAL EVIDENCE ACT 1984

24. Arrest without warrant for arrestable offences

(1) The powers of summary arrest conferred by the following subsections shall apply —

- (a) to offences for which the sentence is fixed by law;
- (b) to offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be so sentenced but for the restrictions imposed by section 33 of the Magistrates' Courts Act 1980); and

(c) to the offences to which subsection (2) below applies, and in this Act 'arrestable offence' means any such offence.

(2) The offences to which this subsection applies are —

(a) offences for which a person may be arrested under the Customs and Excise Acts, as defined in section 1(1) of the Customs and Excise Management Act 1979;

(b) offences under the Official Secrets Acts 1911 and 1920 that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them;

(c) offences under section 14 (indecent assault on a woman), 22 (causing prostitution of women) or 23 (procurement of girl under 21) of the Sexual Offences Act 1956;

(d) offences under section 12(1) (taking motor vehicle or other conveyance without authority etc.) or 25(1) (going equipped for stealing, etc.) of the Theft Act 1968; and

(e) offences under section 1 of the Public Bodies Corrupt Practices Act 1889 (corruption in office) or section 1 of the Prevention of Corruption Act 1906 (corrupt transactions with agents);

(3) Without prejudice to section 2 of the Criminal Attempts Act 1981, the powers of summary arrest conferred by the following subsections shall also apply to the offences of —

- (a) conspiracy to commit any of the offences mentioned in subsection (2) above;
- (b) attempting to commit any such offence;
- (c) inciting, aiding, abetting, counselling or procuring the commission of any such offence;

and such offences are also arrestable offences for the purposes of this Act.

(4) Any person may arrest without a warrant —

- (a) anyone who is in the act of committing an arrestable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be committing such an offence.

(5) Where an arrestable offence has been committed, any person may arrest without a warrant —

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(6) Where a constable has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

(7) A constable may arrest without a warrant —

- (a) anyone who is about to commit an arrestable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.

25. General arrest conditions

(1) Where a constable has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.

(2) In this section 'the relevant person' means any person whom the constable has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

(3) The general arrest conditions are —

(a) that the name of the relevant person is unknown to, and cannot be ascertained by, the constable;

(b) that the constable has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;

(c) that —

- (i) the relevant person has failed to furnish a satisfactory address for service; or
- (ii) the constable has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;

(d) that the constable has reasonable grounds for believing that arrest is necessary to prevent the relevant person —

- (i) causing physical harm to himself or any other person;
- (ii) suffering physical injury;
- (iii) causing loss of or damage to property;

- (iv) committing an offence against public decency;
- (v) causing an unlawful obstruction of the highway;
- (e) that the constable has reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person from the relevant person.
- (4) For the purposes of subsection (3) above an address is a satisfactory address for service if it appears to the constable —
 - (a) that the relevant person will be at it for a sufficiently long period for it to be possible to serve him with a summons; or
 - (b) that some other person specified by the relevant person will accept service of a summons for the relevant person at it.
- (5) Nothing in subsection (3)(d) above authorises the arrest of a person under subparagraph (iv) of that paragraph except where members of the public going about their normal business cannot reasonably be expected to avoid the person to be arrested.
- (6) This section shall not prejudice any power of arrest conferred apart from this section.

CRIMINAL JUSTICE ACT 1925

47. Abolition of presumption of coercion of married woman by husband

Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished, but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

STATUTORY INSTRUMENTS ACT 1946

3. Supplementary provisions as to publication

(1) Regulations made for the purposes of this Act shall make provision for the publication by His Majesty's Stationery Office of lists showing the date upon which every statutory instrument printed and sold by the King's printer of Acts of Parliament was first issued by that office; and in any legal proceedings a copy of any list so published purporting to bear the imprint of the King's printer shall be received in evidence as a true copy, and an entry therein shall be conclusive evidence of the date on which any statutory instrument was first issued by His Majesty's Stationery Office.

(2) In any proceedings against any person for an offence consisting of a contravention of any such statutory instrument, it shall be a defence to prove that the instrument had not been issued by His Majesty's Stationery Office at the date of the alleged contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of the person charged.

MAGISTRATES' COURTS ACT 1980

101. Onus of proving exceptions, etc.

Where the defendant to an information or complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification shall be on him; and this notwithstanding that the information or complaint contains an allegation negating the exception, exemption, proviso, excuse or qualification.